

****E-filed 6/6/11****

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

VANCE S. ELLIOT,

No. C 11-80128 RS

Plaintiff,

v.

**ORDER DENYING WITHOUT
PREJUDICE APPLICATION TO
PROCEED IN FORMA PAUPERIS**

MARCUS LEWIS,

Defendant.

By order issued in Case No 04-1600 MHP, on August 18, 2004, Judge Marilyn Patel of this district required pre-filing review of all papers submitted by plaintiff involving any claims that were the subject of or related to the claims in that action. Plaintiff has now submitted what he characterizes as a “complaint for blackmail,” asserting that defendant Marcus Lewis, an “account manager supervisor,” allegedly has frozen an account in plaintiff’s name at Benefits Management Corporation, until and unless plaintiff dismisses a suit against the company that is pending in San Francisco Superior Court. These allegations do not appear to relate to the matters plaintiff raised in Case No. 04-1600 MHP, and therefore the order in that case does not serve as a basis to deny plaintiff permission to proceed in this action.

Plaintiff, however, also seeks leave to proceed *in forma pauperis*. Pursuant to 28 U.S.C. § 1915, a district court may authorize the commencement of a civil action *in forma pauperis* if the court is satisfied that the would-be plaintiff cannot pay the filing fees necessary to pursue the action.

1 28 U.S.C. § 1915(a)(1). The court may deny *in forma pauperis* status, however, if it appears from
2 the face of the proposed complaint that the action is frivolous or without merit. *O'Loughlin v. Doe*,
3 920 F.2d 614, 616 (9th Cir. 1990); *Tripathi v. First National Bank & Trust*, 821 F.2d 1368, 1370 (9th
4 Cir. 1987).

5 As presently drafted, the complaint is without merit in that it fails to set forth the basis for
6 any claim over which there would be federal jurisdiction. It is also dubious that plaintiff could
7 assert any viable claim against Lewis individually, even assuming there could be some basis to
8 contend that Benefits Management Corporation lacks legal grounds to freeze the account.
9 Accordingly, plaintiff's request to proceed *in forma pauperis* is denied without prejudice. If
10 plaintiff does not pay the filing fee within thirty (30) days of receiving this order, the Court will
11 dismiss the action without prejudice.

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13 Dated: 6/6/11

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15 RICHARD SEEBORG
16 UNITED STATES DISTRICT JUDGE
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THIS IS TO CERTIFY THAT A HARD COPY OF THIS ORDER WAS MAILED TO:

Vance S. Elliott
640 Eddy Street, #218
San Francisco, CA 94109

DATED: 6/6/11

/s/ Chambers Staff
Chambers of Judge Richard Seeborg